Supreme Court, U.S.
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No. 00-1855

In The

# Supreme Court of the United States

CHEVRON U.S.A. PRODUCTION CO.,

*Petitioner,*

versus

ROBERT MYERS,

*Respondent.*

**On Petition For Writ Of Certiorari To The Court Of Appeal, Third Circuit, State Of Louisiana**

## BRIEF IN OPPOSITION OF RESPONDENT, ROBERT MYERS

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## QUESTIONS FOR REVIEW

1. Where Courts have granted relief from the maritime statute of limitations for some actions which were not timely filed, but in which service was ultimately effected; did they impose on those who did file timely, or on State Courts sitting under the savings to suitors clause, rules for service of the defendant that are more onerous than or contrary to those in the generally applicable rules of procedure for that Court?

2. Where the State of Louisiana has established procedural rules for the management of cases filed in its Courts, which procedures do not contravene federal statute, are of general application neither originating nor exclusively applicable in admiralty, and are not materially prejudicial to characteristic features of the general maritime law; do those procedures apply to maritime cases in State Court under the savings to suitors clause?

3. In actions filed in a Louisiana Court, is the term "commenced" as used in the maritime statute of limitations governed by the Louisiana Supreme Court's ruling that an action is commenced by filing suit in a Court of competent jurisdiction; or by Rule 3 of the Federal Rules of Civil Procedure: "A civil action is commenced by filing a complaint with the court;" or by another mandate not expressed in statute or jurisprudence?

## LIST OF PARTIES

In addition to the parties listed by Petitioner, Seabulk Offshore, Ltd., a former defendant, retains an interest herein because it is the indemnitor of Chevron USA Production Co. pursuant to a written vessel charter which requires it to provide insurance coverage to and to defend and indemnify Chevron for this action.

Seabulk Offshore, Ltd., is a limited partnership. Hvide Shipping, Inc. is the direct owner of more than 10% of Seabulk Offshore, Ltd. and Hvide subsidiaries are the other owners and the managing partner of the Seabulk limited partnership.

Hvide Shipping, Inc. is a publicly traded company.

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## OBJECTIONS TO PETITIONER'S FORMULATION OF STATEMENT OF THE CASE

The Statement of the Case offered by Petitioner is materially and significantly incorrect. In support of its argument that this Court should consider this case, Petitioner accuses the Honorable Trial Court of applying the Louisiana statute of limitations to this action. In fact, the Trial Court did no such thing. The Minute Entry attached as Appendix A to the Petition for Writ of Certiorari, provides that "the Court denied the Exception of Prescription [statute of limitations] in Open Court . . . " without reiterating any oral explanation of its Ruling. The Trial Court ruled after it reviewed briefs submitted by both parties. The application of Louisiana's statute of limitations was never asserted by any party to this action; nor did the Court assert the Louisiana limit. Plaintiff specifically stated in his initial Opposition to the Exception of Prescription "the Federal Maritime Prescription limit [statute of limitations] is applicable . . . ". Indeed, plaintiff filed his actions *after* the expiration of the Louisiana limit and could not rely on that law. Since the Louisiana limit is only one (1) year, if the Trial Court had applied the Louisiana limit, it would have been compelled to dismiss this action.

Petitioner further accuses the Louisiana Court of Appeal for the Third Circuit and the Louisiana Supreme Court of permitting the improper application of Louisiana's limitations law to this case. As pointed out above, the Trial Court never did so; neither did the Appellate nor Supreme Court of Louisiana. In briefs submitted to the Louisiana Appellate and Supreme Courts, all parties conceded that the Maritime Statute of Limitations law

was applicable. Indeed, the application of the federal limitation was not contested since even Petitioner conceded plaintiff had filed his action with the three year provision of 46 U.S.C. § 763a.

The Statement of the Case is deficient in that it fails to disclose that the actual party at interest in this Petition for Writ of Certiorari is Seabulk Offshore, Ltd. Seabulk Offshore has a duty to provide defense and indemnity to Chevron, the Petitioner, and to provide it insurance coverage, pursuant to the blanket time charter referenced in the Statement of the Case. The charter was attached to the Exception of No Right of Action (*Res Judicata*) which was considered by the Courts below but which is not a subject of the Petition to this Court. Seabulk was managing the claim of plaintiff, ultimately settling with him in March, 1999, after the federal maritime limitations had run. In that settlement, Seabulk failed to secure a Release of its indemnitee, Chevron, and it did not obtain a discharge of plaintiff's non-Jones Act Maritime and State Law claims against Chevron or the other defendants in this action.

## STATEMENT OF THE CASE

Petitioner, Chevron USA, was a leaseholder on an Outer Continental Shelf site for oil and gas exploration and drilling. ROBERT MYERS was employed by Seabulk Offshore, Ltd. working on a supply boat delivering products and personnel to Chevron's site. Chevron was coordinating joint operations for the drilling of an oil and gas well from a jackup drilling rig operated by Diamond

Offshore, defendant in the action below. There were failures in the acceptance of a load of the drilling lubricant barite onto the drilling rig from the boat.

During numerous attempts to effect the transfer, the barite was scattered about the deck, and thereby created an extremely slippery film in which Mr. Myers fell, suffering the injuries subject to this suit. Chevron had overall charge of operations at the well site, and its representative had the responsibility to direct and coordinate all operations involving both Diamond's drilling rig and Seabulk's supply boat.

Less than three (3) years after his accident, Mr. Myers filed suit against Diamond Offshore and Chevron alleging general maritime negligence. The suit was filed within the time permitted by the federal maritime statute of limitations, in a court of proper venue for the claims. The Court with which it was filed is a trial court of general jurisdiction empowered to render judgment on the merits on all the claims filed by Mr. Myers.

Mr. Myers also sued Seabulk for maintenance and cure, Jones Act negligence, and unseaworthiness. Neither Chevron nor Diamond were sued for maintenance and cure, nor under the Jones Act, nor the warranty of seaworthiness. After the expiration of the three year maritime limitation, Seabulk settled the seaman's claims asserted by Mr. Myers. Under the charter agreement for the supply boat on which Mr. Myers was working, Seabulk owes a defense and indemnity to Chevron. Seabulk did not settle Mr. Myers' claims against Chevron when it obtained a release of his seaman's claim.

Plaintiff then amended his State Court action to reflect the settlement with Seabulk and Chevron was formally served. Chevron filed a Peremptory Exception of Prescription and/or Statute of Limitations. After its defense was assumed by its current counsel, Petitioner filed an Exception of No Right of Action. The Court and the parties recognized and treated the exception as if it had been properly denominated *Res Judicata*. Petitioner claimed it had been released by Seabulk's settlement with Mr. Myers. Both exceptions were briefed, heard and denied by the Trial Court. The Louisiana Court of Appeal and Supreme Court denied Writ applications on both exceptions.

The lower Courts found Mr. Myers had "commenced" his suit for damages by filing with a Court of competent jurisdiction and venue. Commencement is effected by mere filing: in Federal Court cases, pursuant to FRCP 3; and in State Court cases by the long-standing rule of the Louisiana Supreme Court. Petitioner asserted that because this case is maritime, there is a requirement for service of the suit which does not appear in Federal or Louisiana statutes.

At each level below, Trial Court through Supreme Court, the plaintiff has conceded, and the lower Courts must have concluded that 46 U.S.C § 763a, the federal maritime statute of limitations, is applicable. Indeed, plaintiff relies on that limitation since the Louisiana time limit expired long before his suit was filed. Louisiana's Supreme Court has long held that a State Court suit is commenced by timely filing of the action in a court of proper jurisdiction and venue rather than by service. This procedural rule is generally applicable in all actions filed

in Louisiana Courts. It did not originate in admiralty; is not exclusive or peculiar to maritime actions; and is neither part of the general maritime law, nor prejudicial to its characteristic features. The provision in FRCP 3 that filing constitutes commencement is not applicable to this State Court action. However, it reflects a tolerance for such an understanding of the term "commenced" by the very Federal government possessed of the maritime prerogative.

Petitioner now seeks Writs from this Court. It has abandoned its claim to release under the Seabulk settlement. Its objection to the lower Courts' application of Louisiana rules of procedure is the only issue before this Court.

## LACK OF REASONS FOR GRANTING A WRIT

The decisions of the Courts below do not conflict with this Court's holding in *Burnett v. New York Central Railroad Co.*, 380 U.S. 424, 85 S.Ct. 1050 (1965) nor the Fifth Circuit's in *Maxwell v. Swain*, 833 F.2d 1177 (5th Cir. 1987). *Burnett* and *Maxwell* were suits filed with the ultimate Trial Court **after** the expiration of the maritime statute of limitations. The cases cited by Petitioner involve exceptions to the mandate for timely filing set out in the maritime statute of limitations. In this case, plaintiff filed **within** the three year limit in a Court with jurisdiction and venue. He commenced his action timely by filing suit. He has no need for and claims no exception from the statutory filing deadline.

Petitioner also alleged a conflict with the State *Prejean* and *Johnson* decisions. *Prejean v. Industrial Cleanup*, 98-0948 (La. 12/1/98) 721 So.2d 1273, dealt with a suit filed long **after** the three (3) year maritime limit had run. Plaintiff claimed the deadline was interrupted by his employer's payments of worker's compensation benefits; the Louisiana Supreme Court rejected that argument. In contrast, Mr. Myers filed within the maritime limit, and his case involves no payment of worker's compensation. *Johnson v. Acadiana Ry.*, 96-263 (La. App. 3d Cir. 4/16/97) 693 So.2d 226, was filed in a state court of **improper venue** and served after the deadline had passed. The Court held that **under Louisiana law**, the action was not commenced timely. It is inapposite here since Mr. Myers' action was commenced by filing in a Court of **proper jurisdiction and venue and within the three (3) year limit.**

The decision of the State Courts below involved nothing more than an issue of procedure under Louisiana law. Like the *forum non conveniens* procedure reviewed by this Court in *American Dredging Co. v. Miller*, 510 U.S. 443, 114 S.Ct. 981, 127 L.Ed.2d 285 (1994), there is no violation of the federal maritime prerogative. Local procedure was established by the Louisiana Supreme Court decision in *Foster v. Breaux*, 51948 (La. 12/11/1972) 263 La. 1112, 270 So.2d 526 (LA 1972); and reiterated in *Patterson v. Weber Marine*, 93-1764 (La. 11/5/1993) 630 So.2d 687 (LA 1993). The rule was not a maritime rule, and it does not go to substance, only procedure.

Plaintiff/Respondent respectfully suggests that this Court should refuse to grant certiorari in this matter. The instant case does not fall within the jurisdiction *exercised*

by this Court. The questions raised do not constitute "substantial federal questions."

## ARGUMENT

### The decisions of the Courts below do not conflict with the cases cited by Petitioner.

As pointed out above, the *Burnett, Maxwell,* and *Prejean* cases addressed whether complainants succeeded in interrupting the time limit despite the fact that they had not "commenced" their actions by filing as required by the statute. This Court in *Burnett,* noted that the action would have been timely if the original State Court suit could have been transferred to a State Court of proper venue **pursuant to Ohio law.** Pointing out that the Federal case was filed after the expiration of the limit, but before the end of the appeal delays on the dismissed State suit, this Court found an exception to the limit because complainant had served his original State suit within the limit. Although that suit was dismissed due to Ohio's procedural law, the later filed Federal suit was but a continuation of the State suit and the defendant had been put on notice of the action. This Court found that the service effected the purpose of the time limit, making compliance superfluous.

The Fifth Circuit in *Maxwell* noted that the suit filed in a Louisiana Court did not prevent expiration of the limitation on maritime actions because Mr. Maxwell had filed suit in a Court of improper venue. The filing therefore was not a commencement of the action **pursuant to Louisiana law.** The Court noted that complainant had

also filed a Federal Court suit within the time limit mandated by the statute, but it was dismissed as abandoned. The Court found an exception to the limitation because plaintiff had made diligent attempts to effect service on the defendant. Neither *Burnett* nor *Maxwell* expressed a requirement that the defendant be served at a certain time after suit was commenced by timely filing in a Court of competent jurisdiction and venue. There is no conflict here with the Courts below.

**The Courts have not created special non-statutory rules for service in maritime actions.**

Petitioner asserts a federal mandate that a plaintiff must serve his suit within some non-specified time after an action is filed. There is no such mandate in federal statutes applicable here. Specifically, 46 U.S.C. § 763a provides nothing about service of the action, merely that it must be timely commenced.

This Court has not addressed the necessity for service in a timely commenced action. There are of course rules of procedure applicable to all suits filed in Federal Court. The FRCP has detailed rules for not only when, but where and how service may be made. It contains provisions for waiver of service and inducements for the defendant to accept notice by mail. However, the FRCP is not applicable in State Courts.

Louisiana has its own rules of procedure, the Code of Civil Procedure, which govern service of the suit after action has been commenced. Petitioner has not alleged that Louisiana procedures have been violated. Even if he had, that objection would not be grist for this Court's

mill. There is no federal mandate that a State Court hearing a maritime action under the savings to suitors clause must follow the FRCP. There is no maritime statute which requires specific procedures for service to be followed by State Courts. The Courts have recognized there are equitable exceptions to the maritime statute of limitations. But the Courts have not created a more onerous burden on those who manage to effect the timely commencement of their action by filing suit in a competent Court within the statutory time limit. A rule to that effect would be contrary to the long standing jurisprudence holding that States are free to fashion their own remedies.

**State procedural rules may govern the determination whether a State Court maritime action has been commenced.**

In *Herb v. Pitcairn*, 325 U.S. 77, 65 S.Ct. 1188 (1945), the Illinois Supreme Court had dismissed the action because it had been filed in a City Court which did not have jurisdiction to render a final judgment on the merits. The lower court had applied the federal statute of limitations, and dismissed because although the action was timely filed, the court where it was filed was, **under the law of Illinois**, without jurisdiction. This Court remanded for consideration whether the City Court action could, **under state law**, be transferred to a separate state court which had jurisdiction to take the action to final judgment. Following this rationale was the Court's holding in *Burnett v. New York Central Railroad Co.*, 380 U.S. 424, 85 S.Ct. 1050 (1965). *Burnett* noted that if that State Court claim could have been transferred to a Court of proper venue **pursuant to a provision of Ohio law**, the

action would have been timely. It then held that since service on defendant had been obtained within the time limit, a Federal Court claim filed after the expiration of the limit would also be timely. In both cases, this Court considered the federal statute of limitations could have been satisfied if **state law** had permitted the actions to proceed to judgment. The instant case is also governed by the same rationale. This claim was timely filed pursuant to the federal statute, and Louisiana law permits the Court where it was filed to proceed to judgment. Had plaintiff failed to comply with the law of Louisiana by filing in a court of improper venue, or other violation of state procedural rules, the case would have been properly dismissed as untimely. Of course he could seek refuge in one of the exceptions to the statute of limitations permitted by the Courts. But of course, since he filed his action timely, he need not do so. Both the Louisiana Third Circuit Court of Appeal and the Louisiana Supreme Court have acknowledged and applied the mandate of this Court. *Johnson, supra,* La.App. 3d Cir., *Prejean, supra,* La.S.Ct.

In the instant case, the action was timely filed in a court of proper venue, of competent jurisdiction, and empowered to bring the claim to a final judgment on the merits. Following the rationale of this Court, there was no basis for Petitioner's assertion that plaintiff had violated the federal maritime statute of limitations, and Respondent's Exception of Prescription and/or Statute of Limitations was properly denied.

**State procedures are applicable to maritime actions brought in State Courts if the rules are of general application.**

At issue below was the application of Louisiana's post-filing procedure, *i.e.*, when must defendant be served. Of similar import are other post-filing Louisiana rules on how, where, upon whom and by whom service must be effected, the time lapse before a case is held abandoned, venue, delays for answer, the filing of exceptions, default proceedings, waiver of procedural defects, and myriad other rules. Respondent alleges Louisiana's rule defining commencement of an action as the filing of suit cannot govern maritime actions, but they instead are subject to an additional requirement that the action is not commenced until defendant is served, and only if that service is "prompt". Yet the governing rule in Federal Courts is FRCP 3, which provides that "A civil action is commenced by filing a complaint with the court." Where the Louisiana rule is identical to FRCP 3, and neither requires service to effect commencement, it seems unlikely that Louisiana's rule violates maritime principles.

Under the decision of this Court, it is state procedural law that establishes the process by which the timely filed federal action may be brought to final judgment. This Court, in *Chelentis v. Luckenbach S.S. Company*, 247 U.S. 372, 38 S.Ct. 501 at 504, 62 L.Ed. 1171 (1918) stated:

> The distinction between rights and remedies is fundamental. A right is a well founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury.

> *Bouvier's Law Dictionary*. Plainly, we think, under the savings clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law. . . .

However, the court may not use state law as a measure by which to measure the liability of the defendant. None of the lower courts has measured the liability of the defendant to date. Maritime law will govern the substantive issues when liability is measured.

This Court in *American Dredging Co. v. Miller*, 510 U.S. 443, 114 S.Ct. 981, 127 L.Ed.2d 285 (1994) addressed a different part of Louisiana's procedural law. Faced with Louisiana's rule limiting the types of cases which its Courts could refuse to hear, this Court noted that it was considering a procedural rule.

> . . . the doctrine of *forum non conveniens* is . . . a matter that goes to process rather than substantive rights. . . . Uniformity of process (beyond the rudimentary elements of procedural fairness) is assuredly not what the law of admiralty seeks to achieve, since it is supposed to apply in all courts of the world. 114 S.Ct. at 988

Procedural rules for operation of a state's courts or the process by which a claim is brought to a final judgment are not precluded by general maritime law. This is particularly so for procedures that are generally applicable and did not originate in admiralty nor have exclusive application there. This Court relied heavily on these considerations in *American Dredging, supra*:

> . . . the doctrine of *forum non conveniens* neither originated in admiralty nor has exclusive application there. To the contrary, it is and has long been a doctrine of general application. Louisiana's refusal to apply *forum non conveniens* does not, therefore work "material prejudice to [a] characteristic featur[e] of the general maritime law." 114 S.Ct. at 987

The instant case involves a procedure which is even more generally applicable and far removed from admiralty and maritime matters than the doctrine of *forum non conveniens*. There is no federal question of significance, nor any issue of maritime law to be considered.

To the extent this case does involve an issue of maritime law, it should be considered that the limitation imposed by maritime law "still leaves the States a wide scope." *Romero v. International Term. Oper. Co.*, 358 U.S. 354 at 373, 79 S.Ct. 468 at 480, 3 L.Ed.2d 769 (1959). This Court has held that a state may apply its laws on the high seas, *Skiriotes v. Florida*, 313 U.S. 69, 61 S.Ct. 924 (1941); that it may exercise its police powers in marine venues, *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325, 93 S.Ct. 1590, 36 L.Ed.2d 280 (1973); and that its laws may supplement or actually preempt maritime law where there is a great state interest in the dispute, *Romero, supra*.

**The similar FRCP and Louisiana definition of "commencement" suggests no federal question.**

To be reviewable by the Supreme Court, a final judgment of a state's high court must present a "substantial" federal question. In its assessment of "substantiality" this Court should consider whether, in order to safeguard a

federally protected right, or to preserve the integrity of federal law, it is necessary to reverse the Louisiana Supreme Court. This case does not deal with issues which this Court has commonly found to involve substantial federal questions. It is one involving the construction of state rules of procedure as applied to a particular and local fact situation.

In its review, this Court will not indulge in a reexamination of the state court's factual determinations. Nor will this Court review the state court's construction and application of state law. Here, the lower Courts applied the maritime statute of limitations properly. The definition of "commencement" in the FRCP suggests that Louisiana's definition is not contrary to maritime principles. There was never an attempt to extend or expand the limit; Plaintiff was found to have timely commenced his action in a Court of proper jurisdiction and venue in accord with the federal act. There is no substantial federal question for this Court to consider.

## CONCLUSION

The decisions of the Courts below do not conflict with cases cited by Petitioner. The Courts have not created special, non-statutory rules for service in maritime actions commenced within the statute of limitations. The Courts below properly applied the maritime statute of limitations, 46 U.S.C. § 763a. The rationale of *American Dredging Co. v. Miller, supra,* permits the application of State procedure laws to maritime actions brought under the savings to suitors clause. The Courts below applied

Louisiana's general rules of procedure in a manner unrelated to and non-prejudicial to the essential characteristics of the General Maritime Law. The Louisiana rule that an action is commenced by mere filing of suit in a Court of competent jurisdiction is comparable to the FRCP and not inimicable to the general maritime law. The Petition does not raise a significant federal question and should be denied.

In answer to the QUESTIONS FOR REVIEW:

1. By granting relief from the maritime statute of limitations to some who had not complied with it, *Burnett* and its progeny did not impose special, non-statutory service rules on State Courts hearing maritime actions, nor on persons who comply with the statute.

2. Louisiana's rules of procedure, including its definition of "commencement" and service on defendant, are applicable in general maritime actions filed under the savings to suitors clause.

3. In a Louisiana Court an action brought under the savings to suitors clause may be commenced by filing suit within the 3 years provided by 46 U.S.C. § 763, in a Court of competent jurisdiction.

Respectfully submitted,

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